



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-00304

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

02/26/2016

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant failed to mitigate the security concerns regarding his financial considerations. Eligibility for access to classified information is denied.

Statement of Case

On July 1, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DoD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs) implemented by DoD on September 1, 2006.

Applicant responded to the SOR on July 24, 2015, and requested a hearing. The case was assigned to me on October 20, 2015. The case was scheduled for hearing on November 19, 2015. At the hearing, the Government's case consisted of five exhibits (GEs 1-5). Applicant relied on one witness (himself) and ten exhibits (AEs A-L). The transcript (Tr.) was received on December 2, 2015.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 16 delinquent debts exceeding \$36,000. Allegedly, these debts remain outstanding.

In his response to the SOR, Applicant admitted most of the allegations with explanations. He denied any debts owed to creditors covered in subparagraph 1.i (disputed account that he claims belongs to his father) and subparagraphs 1.n and 1.o (duplicates of subparagraphs 1.g and 1.h, respectively). Applicant claimed he experienced extended periods of unemployment in 2007-2008 and loss of income between 2010 and 2014 due to a layoff and forced reliance on part-time jobs and unemployment income. He claimed he paid off a previous judgment (not included in the SOR) and is paying down another creditor listed in the SOR under subparagraph 1.m.

Findings of Fact

Applicant is a 46-year-old program analyst of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in May 1995 and legally separated from his spouse in May 2002. (GE 1; Tr. 56) Applicant has no children from his marriage. He was never officially divorced from his spouse and filed a property settlement agreement in 2002 covering the past ten years. He has no children from this marriage. He has been living with his significant other as cohabitants; they have a seven-year old son from this relationship. (GE 1; Tr. 56-58, 64,81)

Applicant earned a bachelor's degree from a recognized university in 1991. (GE 1 and AE C; Tr. 59) He claimed no military service.

Applicant has worked for his current employer since August 2013 as a program analyst. (GE 1 and AE C) He has held a part-time position as a basketball coach since 2008. (AE C) Between December 2011 and August 2013, he held no full-time employment position and relied on his income from his part-time employment and unemployment insurance. (GE 1 and AE C; Tr. 59-62) Between December 2010 and December 2011, Applicant worked as a personal banker for a local bank and was relieved of his duties with the bank for a cited customer data violation (consistently disputed by Applicant (GE 1; Tr. 51) Before joining this local bank, he worked for various financial institutions over the course of two and a half years. (GE 1 and AE C; Tr. 68-70) He was

unemployed for a period between May 2007 and January 2008 following a corporate layoff from a firm that was downsizing. (GE 1 and AEs C and J; Tr. 50-52) Before his layoff from this firm, he worked for this firm as a territory manager for about six months spanning between November 2006 and May 2007.(GE 1; Tr. 59-61)

Finances

Between 2008 and 2013, Applicant was limited to part-time employment, except for a brief period in 2010-2011, and struggled to pay his bills. (GEs 1-5 and AE C) During this time, he accumulated delinquent debts with a host of creditors (mostly credit card debts).

Applicant's listed debts are as follows; creditor 1.a (\$1,196); creditor 1.b (\$1,504); creditor 1.c (\$439); creditor 1.d (\$796); creditor 1.e (\$791); creditor 1.f (\$1,013); creditor 1.g (\$692); creditor 1.h (\$487); creditor 1.i (\$3,465); creditor 1.j (\$7,591); creditor 1.k (\$5,565); creditor 1.l (\$2,527); creditor 1.m (\$2,114); creditor 1.n (\$692); creditor 1.o (\$486); and creditor 1.p (\$1,363). Altogether, these listed delinquent debts exceed \$36,000. (GEs 2-4)

One of the listed debts in the SOR is a credit card debt with creditor 1.i. Applicant claims this debt belongs to his father that he has never had a creditor 1.i credit card. (Answer to SOR) His claims are corroborated. Recent credit reports list Applicant as an authorized user only. (HE 1 and GEs 4-5) On the basis of Applicant's own accounts and corroborating credit reports, inferences warrant that Applicant's listed 1.l debt is not a debt for which Applicant is legally responsible for. Four other listed debts (creditors 1.g and 1.n and creditors 1.h and 1.o) appear to be duplicates. Applicant's disputes with these creditors over duplication are accepted.

Applicant has addressed some of his admitted delinquent accounts since returning to full-time employment in 2013. He has paid down his creditor 1.c account through a debt assistance firm and is working with another debt counselor on paying other debts. (AEs B and H; Tr. 54-55) And he has paid off a non-listed judgment debt in 2015 in the amount \$2,600 by creditor garnishment over a four-week period in May 2014 for the whole amount. (AE G; Tr. 89-95) However, to date, he has not addressed any of his other listed debts. (Tr. 54) He also satisfied another non-SOR debt in October 2015 with a \$619 payoff. (AE H; Tr. 41-42)

Applicant currently makes \$49,000 a year from his current employer. He earns an estimated \$2,000 to \$4,000 a year from his basketball coaching, and an additional \$4,000 to \$5,000 from other part-time employment. (AE L; Tr. 67, 76-77) Altogether, he earns about \$57,500 a year from combined income sources. (AE L; Tr. 67, 76-77)

Applicant assured that he is current with his taxes and monthly expenses. (Tr. 78-79) Beginning in May 2014, he has worked with a debt counselor, albeit without any written agreement. (AE B; Tr. 84-85) He also counseled with an attorney about his debts

and the merits of pursuing bankruptcy. Out of concern for the costs of funding a bankruptcy petition, he has not elected to file for bankruptcy with her. (Tr. 83-84)

Besides the listed SOR debt (creditor 1.c) he is paying down, he satisfied a judgment entered against him in 2011. He satisfied the balance owing on this judgment debt in 2015, after being garnished on the judgment for a number of months in 2014. (AE G; Tr. 93-94) He satisfied another non-SOR debt in October 2015 with a \$619 payoff. (AE H; Tr. 41-42)

With his limited resources, Applicant has encountered difficulties paying his other debts. He has a 401(k) retirement account of only \$4,500 and has already borrowed once against the account to pay off a non-SOR debt. (AE H; Tr. 97-98) Currently, he is committed to paying off one debt at a time and with his limited income, he can not be any more specific. (Tr. 50) At this time, he has no established plan for addressing his remaining debts in any definitive time frame. (Tr. 108, 117-118)

Endorsements

Applicant is highly regarded by his manager who assigned him strong performance evaluations and expressed the utmost trust in his handling of sensitive matters. (AE K) Applicant's manager noted his contributions to his community through his service as a local basketball coach for various youth organizations. Other colleagues credited him with being a highly trustworthy team member and proactive member of the community as a women's basketball coach. (AE K)

Applicant's documented performance evaluations for the past two rating years credit him with exceeding expectations in all of the rating categories. (AE J) Specifically, in this category rating, he is credit with consistently meeting, and sometimes exceeding all performance standards expectations relative to showing initiative and versatility, working collaboratively, and having strong technical and interpersonal skills. (AE J)

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns."

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following AG ¶ 2(a) factors are pertinent: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Financial Considerations

The Concern: Failure or inability to live within one's means satisfy debts and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Executive Order 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is a highly regarded program analyst for his current employer since joining his firm in 2013. Over the course of the previous five years he encountered recurrent periods of unemployment and underemployment that hampered his ability pay his bills in a timely way without any help from his wife or current cohabitant.

Security concerns are raised over Applicant's accumulation of delinquent debts during the 2008-2013 period when he lacked consistent full-time employment. Applicant's accrual of delinquent debts warrants the application of two of the disqualifying conditions (DC) of the AGs: DC ¶ 19(a), “inability or unwillingness to satisfy debts,” and DC ¶ 19(c), “a history of not meeting financial obligations.”

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also implicit in financial cases.

Extenuating circumstances are present in connection with Applicant's accumulation of delinquent debts, attributable in part to his recurrent periods of unemployment and underemployment. Applicant's circumstances merit partial application of MC ¶ 20(b), “the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.”

Before his layoff in 2007, Applicant enjoyed good credit. With his reduced income while unemployed and working part-time jobs, Applicant struggled to stay current with his debts: some listed in the SOR as unpaid accounts, and some not included in the SOR. By 2013, he was delinquent on many of his debts and resigned to paying his debts one debt at a time. To date, he has satisfied two non-SOR debts (inclusive of a judgment debt that was garnished by the judgment holder). Of the listed SOR debts, he has voluntarily paid down the debt owed to creditor 1.c. Two of the SOR listed debts (i.e., creditors 1.n and 1.o) are duplicates of two other listed SOR debts and are resolved favorably to Applicant. Similarly, probative evidence established that the listed creditor 1.i debt does not belong to Applicant.

However, Applicant has been unable to address his remaining debts with his limited income, or document his dispute with creditor 1.l. And his payment initiatives are insufficient to fully satisfy the acting responsibly component of MC ¶ 20(d).

To his credit, Applicant did pursue financial counseling with professional counselors. Both answered questions about addressing his debts. For lack of income, he never followed through with any formal agreements with these counseling firms. Based on his limited counseling initiatives, MC ¶ 20(c), “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control,” has only limited application to Applicant’s situation.

With a host of delinquent debts still unaddressed and the lack of any concrete plan for paying his remaining debts, Applicant is unable to demonstrate the level of financial progress required to meet the criteria established by the Appeal Board for assessing an applicant’s efforts to rectify his financial condition with responsible efforts considering his circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009).

From a whole-person perspective, Applicant’s limited repayment efforts to date, while encouraging, are still a work-in-progress and not substantial enough to overcome security concerns associated with his accumulated delinquent debts over an extended period of time (i.e, between 2008 and 2013). His contributions to the national defense and his community are considerable and worthy of significant recognition when assessing his trustworthiness and reliability. More substantial at this, though, are security concerns about the state of his finances and the need for more documented progress in the addressing of his debts.

Considering all of the circumstances surrounding Applicant’s accrual of delinquent debts and the challenges remaining for Applicant to stabilize them to levels reconcilable with minimum eligibility standards for holding a security clearance, more time is needed for Applicant to address and resolve his remaining debts. Applicant’s efforts to date in stabilizing his finances are insufficient to meet mitigation requirements imposed by the guideline governing his finances. Unfavorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.a-1.b,1.d-1.h,

and 1.j-1.m of Guideline F. Favorable conclusions are warranted with respect to the allegations covered in subparagraphs 1.c, 1.i and 1.n-1.o.of the guideline.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparas. 1.a-1.b, 1.d-1.h, and 1.j-1.m:	Against Applicant
Subparas. 1.c, 1.i. and 1.n-1.o:	For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied granted.

Roger C. Wesley
Administrative Judge

